STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of A. J. SALAMEH, Minor.

UNPUBLISHED
July 1, 2014

No. 318790
Wayne Circuit Court
Family Division
LC No. 11-504746-NA

Before: SAWYER, P.J., and METER and FORT HOOD, JJ.

PER CURIAM.

Respondent appeals as of right from the trial court order terminating her parental rights to the minor child under MCL 712A.19b(3)(c)(*i*), (g), and (h). We affirm.

I. FACTUAL BACKGROUND

The child was removed in December 2012 after respondent was arrested for felonious assault. Respondent was subsequently convicted and returned to prison as a parole violator. Previously, she was convicted of unarmed robbery and first-degree home invasion and was given consecutive sentences of five to fifteen and five to twenty years in prison. The child's father could not be identified initially. He later signed an affidavit of parentage but failed to come forward to plan for the child. He has not appealed the termination of his parental rights.

Respondent made admissions to the petition and was ordered to complete a Parent Agency Agreement (PAA), including counseling, parenting classes, supervised parenting time, and substance abuse assessment and treatment. Upon release, respondent was to obtain and maintain suitable housing and income. At the time, respondent's earliest release date (ERD) was December 2012. The Department of Human Services (DHS) or Lutheran Social Services (LSS) caseworkers visited respondent in prison and ensured that she continued to receive services. The referee found her motivated to complete her plan.

Respondent went before the Parole Board in March 2012 and was denied parole. Her ERD was pushed back to June 2013. The Parole Board emphasized the conduct underlying her latest parole violation and also her misconduct history while in prison. Respondent did well on her PAA, finishing parenting classes and continuing counseling and substance abuse treatment. She was able to visit the child in prison in January 2013. Although the caseworker reported that respondent behaved appropriately, the child ran around and had "meltdowns." Still, LSS attempted to arrange additional visits, but at least some were frustrated by respondent being in

segregation because of prison misconducts. These misconducts also caused respondent to be denied parole again and her ERD was pushed back to August 2014.

A termination petition was filed in June 2013. The LSS foster care supervisor testified that respondent tried to engage the child at parenting times, but he played with other children and the caseworker. He also displayed a strong bond with the foster parents, who were willing to adopt him. Respondent testified and presented the testimony of her mother, who lived in Minneapolis, and her assistant resident unit manager (ARUS). The ARUS spoke positively about respondent's recent misconduct-free adjustment. Respondent had a job in prison and completed "Moving On" and "RSAT" substance abuse treatment, which were all factors the Parole Board would look upon favorably. However, it was not possible to predict when respondent would be released. The maternal grandmother testified that she had called the caseworker in February 2013 and expressed an interest in caring for the child. The maternal grandmother also visited in July 2013. Although respondent mother favored her mother obtaining guardianship, respondent had earlier stated that none of her relatives would be suitable to care for the child.

The referee recommended termination of respondent's parental rights under MCL 712A.19b(3)(c)(*i*) (conditions of adjudication continue and are not rectified), (g) (failure to provide proper care or custody), and (h) (imprisonment for more than two years). A fourth subsection, (a)(*ii*) (desertion for more than 91 days), was cited in the referee's written opinion but was apparently intended to refer to the father, and the evidence did not support termination of respondent's parental rights under this subsection. The referee also found termination to be in the child's best interests. The court adopted the referee's recommendation and terminated respondent's parental rights in September 2013.

II. STATUTORY GROUNDS FOR TERMINATION

On appeal, respondent challenges the court's finding of sufficient evidence to terminate her parental rights under subsections (c)(*i*), (g), and (h). Termination of parental rights is appropriate where petitioner proves by clear and convincing evidence at least one ground for termination, and where termination is in the child's best interests. MCR 3.977(H)(3); MCL 712A.19b(5); *In re Trejo*, 462 Mich 341, 355; 612 NW2d 407 (2000); *In re B & J*, 279 Mich App 12, 17; 756 NW2d 234 (2008). This Court reviews the lower court's findings under the clearly erroneous standard. MCR 3.977(K); *In re Mason*, 486 Mich 142, 152; 782 NW2d 747 (2010). A finding of fact is clearly erroneous if the reviewing court has a definite and firm conviction that a mistake has been committed, giving due regard to the trial court's special opportunity to observe the witnesses. *Mason*, 486 Mich 152; *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989).

The trial court did not clearly err in finding clear and convincing evidence to terminate respondent's parental rights under MCL 712A.19b(3)(c)(*i*) and (g). Respondent argues that DHS did not make reasonable efforts to reunite her with her child. Reasonable efforts to reunify parents and children must be made "in all cases" except those involving aggravated circumstances not present here. MCL 712A.19a(2); *Mason*, 486 Mich at 152. Clearly delineated, properly tailored services are very important, because the parent will be judged to see

if she is participating and has benefited sufficiently to return the children. See, e.g., *In re Gazella*, 264 Mich App 668, 676-677; 692 NW2d 708 (2005).

Here, DHS did make reasonable efforts by arranging for parenting times, visiting respondent in prison and going over her PAA with her, and communicating with prison staff and monitoring the mother's progress on her PAA. DHS also attempted to locate suitable relatives for placement, but respondent did not return the "relative forms" or provide contact information, and she described her Minnesota relatives in very unfavorable terms. Although she said that two early caseworkers told her that placement in Minnesota was "impossible," these workers did inform respondent accurately that placement with distant relatives would hinder respondent's bond with the child because she would be unable to visit. Concerning respondent's Indian heritage, DHS received a reply from the Red Lake Band of Chippewa Indians that the child and/or parent were not eligible for enrollment and the Tribe did not plan to participate in the proceedings. Only the Tribe can determine its own membership. *In re Morris*, 491 Mich 81, 100; 815 NW2d 62 (2012); *In re Shawboose*, 175 Mich App 637, 639; 438 NW2d 272 (1989).

We find no clear error in the trial court's determination that subsections (c)(*i*) and (g) were proven by clear and convincing evidence. Respondent's continuing misconducts in prison reflected poor adjustment and raised questions regarding her ability to live crime-free in the community upon her release. She was twice denied parole and her earliest release date was pushed back to August 2014. The most recent misconduct was in March 2013, well into the child protective proceedings when respondent should have been on her best behavior to reunite with her son. Respondent also received an "Action Code 29" which, according to her ARUS, showed a poor prognosis or a high likelihood of returning to crime. Although respondent showed obvious potential and did well in some aspects of her treatment plan, she had failed to substantially correct the conditions of adjudication and would not have been ready to care for the child within a reasonable time, considering his age.

With regard to MCL 712A.19b(3)(h), DHS must show that, because of the parent's imprisonment, the child will be deprived of a normal home for more than two years. Respondent correctly notes that the two-year period under subsection (h) is prospective and is not to be computed from the time the child is removed. "The trial court must consider 'whether the imprisonment will deprive a child of a normal home for two years in the future and not whether past incarceration has already deprived the child of a normal home.'" *Mason*, 486 Mich at 161-162 n 12, quoting *In re Neal*, 163 Mich App 522, 527; 414 NW2d 916 (1987). In *Mason*, the Supreme Court held that the trial court "erred by concluding, on the basis of [the caseworker's] largely unsupported opinion, that it would take at least six months for respondent to be ready to care for his children after he was released from prison." *Mason*, 486 Mich at 162. Here, the court made a similar conclusion, without specifying a period of time. Based on the evidence, though, there was no reliable estimate regarding how long it would take respondent, upon release, to be able to adequately care for the child. This would depend on her performance at parenting times and in the community. With drugs, alcohol, burglary, robbery, and felonious assault in her past, the danger of reoffending was significant, and DHS would have been justified in taking a cautious approach. However, DHS did not show that, because of respondent's incarceration, the child would be deprived of a normal home for more than two years as required by MCL 712A.19b(3)(h). *Mason*, 486 Mich at 160-161. Consequently, the court clearly erred in terminating respondent's parental rights under subsection (h). However, only one statutory

ground need be proven by clear and convincing evidence to terminate parental rights. *In re Powers*, 244 Mich App 111, 118; 624 NW2d 472 (2000). In this case, termination was clearly appropriate under subsections (c)(*i*) and (g).

III. BEST INTERESTS OF THE CHILD

Lastly, respondent argues that the court clearly erred in finding termination to be in the child's best interests. Once a statutory ground for termination is established by clear and convincing evidence, the trial court must terminate parental rights if termination is in the child's best interests. MCR 3.977(H)(3); MCL 712A.19b(5). We review the trial court's decision on best interests for clear error. MCR 3.977(K); *Trejo*, 462 Mich 356-357; *In re Foster*, 285 Mich App 630, 633; 776 NW2d 415 (2009).

Respondent initially argues that the court's findings on best interests were insufficient. We disagree. Reading the referee's oral and written findings together, they were clearly sufficient. The referee found termination was in the child's best interests because the child was two years old, had been in care over half of his life, and was in need of permanency and consistency. The child could not wait indefinitely; respondent's parole was denied and her ERD was pushed back a year, to August 2014. After this, the child could not be returned until respondent showed that she had dealt with her issues. There was no indication of when, or if, respondent would be able to care for the child adequately.

Aside from the court's minor errors regarding the child's age and time in care, the court's reasoning was sound. The need for permanency and stability may be considered in determining the child's best interests, along with the parent's parenting ability and bond with the child and the advantages of the foster home over the parent's. *In re Olive/Metts*, 297 Mich App 35, 42-43; 823 NW2d 144 (2012). The child had been in care for over half of his life and had a strong bond with the foster parents. He cried and had tantrums during and after the three-hour drive to visit with respondent, and the lack of more visits was attributable at least in part to respondent's receiving misconducts and being in segregation. Although doing well with her prison services, respondent had a poor history of adhering to prison rules and the norms of society. Whether she could stay misconduct free and get her "Action Code 29" removed was not clear from the evidence.

Respondent also criticizes the lower court for failing to adequately consider relative care. The evidence did not support respondent's arguments. At the time of the termination hearing, respondent had not formulated a suitable plan for relative care, and respondent's mother and aunt did not come forward until the end. Placing the child in Minnesota would have hindered the parent-child bond, and respondent chose to try to obtain custody herself instead of recommending her relatives. In any event, it would not be in the child's best interest to wait longer for an uncertain future with respondent or her relatives.

Affirmed.

/s/ David H. Sawyer
/s/ Patrick M. Meter
/s/ Karen M. Fort Hood